

SIAC AND INSTITUTIONAL ARBITRATION

National University of Singapore Faculty of Law
Academic Year 2024 - 2025

COURSE CONVENOR AND CO-TEACHERS

Course Convenor: Mr. Kevin Nash

Co-Teachers: Mr Davinder Singh, SC, Mr Benson Lim, Ms Jennifer Lim, Mr Joel Quek, Mr Mahesh Rai, Mr Ramesh Selvaraj, Ms Samantha Tan, Ms Melissa Thng, Mr Kevin Nash, Mr Vivekananda Neelakantan, Ms Snigdha Bhatta, Mr Vakhtangi Giorgadze, Ms Duong Hoang, Mr Nusry Hussain, Mr Rishabh Malaviya, Mr Shivam Patanjali, Mr Andres Larrea Savinovich, Ms Zhao Yue

COURSE DESCRIPTION

Arbitral institutions are important stakeholders in the field of international arbitration, but the nature and importance of their role have often been overlooked. The course seeks to introduce participants to the role and function of arbitral institutions in guiding and shaping the practice and development of international arbitration, and to the complex issues that arbitral institutions face in the administration of arbitrations, including, among others, the appointment of arbitrators and the issuance of arbitral rules and practice notes. The course will be taught by visiting lecturers from the Singapore International Arbitration Centre (SIAC) and other leading arbitration practitioners.

OUTLINE OF SYLLABUS

Session 1: 26 September 2024 (Thursday) 6pm – 9pm (SGT)

Lecturers: Mr Davinder Singh, SC, Mr Kevin Nash, Mr Shivam Patanjali

❖ Introduction to institutional arbitration ecosystems and SIAC

- The importance of the ecosystem
- Role of arbitral institutions in international arbitration
- Overview of leading arbitral institutions
- Institutional arbitration as opposed to *ad hoc* arbitration
- History of SIAC
- Role of SIAC Court of Arbitration, President of the SIAC Court, SIAC Registrar, SIAC Secretariat, and the interactions between them
- Overview of SIAC's Rules and Practice Notes – SIAC Rules 2016; SIAC Investment Arbitration Rules 2017

❖ Case Management Role of SIAC

- Notice of Arbitration
- Commencing the arbitration
- Response to Notice of Arbitration; Counterclaims
- SIAC Schedule of Fees

- Determining amount of deposits payable towards the costs of the arbitration; stages of deposit payment
- Provisional estimates of costs of arbitration
- Ensuring the smooth running of the proceedings; how to keep arbitrations on track
- SIAC's role in administering arbitrations under the UNCITRAL Arbitration Rules
- Class Exercise

Session 2: 27 September 2024 (Friday) 6pm – 9pm (SGT)

Lecturers: Mr Kevin Nash, Ms Snigdha Bhatta, Mr Nusry Hussain

❖ **SIAC's role in the Constitution of the Arbitral Tribunal**

- Nomination; Appointment and confirmation of arbitrators
- Disclosure and conflicts of interest
- Qualifications of arbitrators
- Challenge of arbitrators
- Replacement of arbitrators
- IBA Guidelines on Conflicts of Interest in International Arbitration (2024)
- SIAC's statutory appointing role under the International Arbitration Act
- SIAC Code of Ethics for an Arbitrator
- Class Exercise

Session 3: 28 September 2024 (Saturday) 9am -12pm (SGT)

Lecturers: Mr Ramesh Selvaraj, Mr Joel Quek, Mr Vivekananda Neelakantan, Mr Andres Larrea Savinovich

❖ **Jurisdictional Objections, Consolidation and Joinder, Emergency Arbitrator, Expedited Procedure, Early Dismissal**

- Jurisdictional Objections (Rule 28.1, SIAC Rules 2016)
- Multiple Contracts, Joinder of Additional Parties and Consolidation
- Emergency Arbitrator applications
- Expedited Procedure applications
- Early Dismissal applications
- Role of the SIAC Court of Arbitration, President of the SIAC Court, SIAC Registrar and the SIAC Secretariat
- Class Exercise

Session 4: 28 September 2024 (Saturday) 2pm – 5pm (SGT)

Lecturers: Mr Mahesh Rai, Ms Melissa Thng, Mr Vivekananda Neelakantan

❖ **The Arbitral Proceedings**

- Procedural Order No. 1 / Procedural Timetable No. 1
- Seat of the arbitration – delocalisation of the seat in SIAC Rules 2016
- Conduct of the proceedings
- Language of the arbitration
- Party representatives
- Third Party Funding
- Pleadings
- Witnesses

- Document disclosure
- Hearings
- Role of Tribunal Secretaries
- IBA Rules on the Taking of Evidence in International Arbitration (2020)
- SIAC Practice Note for Administered Cases – On the Appointment of Administrative Secretaries (2 February 2015)
- SIAC Practice Note on Arbitrator Conduct in Cases involving External Funding (31 March 2017)
- Class Exercise

Session 5: 29 September 2024 (Sunday) 9am-12pm (SGT)

Lecturers: Mr Benson Lim, Mr Rishabh Malaviya, Ms Duong Hoang

❖ **Award and Costs of the Arbitration**

- Close of proceedings and submission of draft awards; SIAC Award Checklist (effective 31 March 2023)
- Scrutiny of Awards
- Correction of Awards, Interpretation of Awards and Additional Awards
- Decision as to the Costs of the Arbitration
- Confidentiality of arbitration
- Publication of Awards
- Authentication and Certification
- Class Exercise

Session 6: 29 September 2024 (Sunday) 2pm – 5pm (SGT)

Lecturers: Ms Jennifer Lim, Ms Samantha Tan, Ms Zhao Yue, Mr Vakhtangi Giorgadze

❖ **SIAC, Investor State Dispute Settlement and Alternative Dispute Resolution**

- SIAC Investment Arbitration Rules
 - Jurisdictional criteria
 - List procedure for appointment of sole or presiding arbitrator
 - Opt-in mechanism for appointment of Emergency Arbitrator
 - Challenges to arbitrators
 - Early dismissal of claims and defences
 - Written submissions by non-disputing parties
 - Third-party funding arrangements
 - Confidentiality and publication of key information relating to dispute
- SIAC-SIMC Arb-Med-Arb Protocol
- Class Exercise

MODE OF ASSESSMENT

Students will be assessed on the basis of a 3,000-word (excluding footnotes) research paper (**100%**). Please select one of the topics below.

There is no sit-down or take-home exam for this course.

Research papers are due for submission on 2 November 2024 at 12pm.

Topics for Written Assignment

1. The end goal of an arbitration is for a valid, enforceable award to be rendered. In practice, most arbitral awards are voluntarily complied with by parties. However, in some instances, the losing party may attempt to set aside the award on various grounds and challenge the enforcement of the award.

Critically analyse arbitration-related court jurisprudence in Singapore and one other jurisdiction, to assess the performance of SIAC in this respect, and suggest areas for improvement, where appropriate.

2. The SIAC-SIMC Arb-Med-Arb Protocol (**Protocol**) was introduced in 2014, as part of a collaboration between SIAC and the Singapore International Mediation Centre (**SIMC**) to allow parties the benefits of both arbitration and mediation procedures.

Analyse and critically evaluate the success of the Protocol, its strengths and weaknesses and suggest potential refinements to the Protocol where needed. The paper should also evaluate the extent to which the Protocol would still be of relevance and utility to parties in the years ahead with the coming into force of the United Nations Convention on International Settlement Agreements Resulting from Mediation (**Singapore Convention on Mediation**).

General Reading Materials

1. SIAC Arbitration Rules 2016
2. SIAC Investment Arbitration Rules 2017
3. SIAC Practice Notes
4. Public Consultation Draft of the 7th edition of the SIAC Rules
5. Singapore International Arbitration Act (Cap. 143A)
6. IBA Rules on the Taking of Evidence in International Arbitration (2020)
7. IBA Guidelines on Conflicts of Interest in International Arbitration (2024)

Supplementary Reading Materials

8. John Choong, Mark Mangan, and Nicholas Lingard, A Guide to the SIAC Arbitration Rules, 2nd ed., (Oxford University Press)
9. Paul Sandosham, Nish Shetty, Harpeet Singh Nehal SC, Kabir Singh, “A Practical Guide to the SIAC Rules”, (LexisNexis)
10. Gary Born, International Commercial Arbitration, 3rd ed, 2020, Kluwer Law International